

CHAPTER 219.

[Published March 25, 1874.]

AN ACT to amend chapter 151 of the laws of 1873, entitled "an act to incorporate the city of Neenah."

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows :

When aldermen are absent or unable to attend meeting of board of supervisors, the common council may appoint a representative.

Who are deemed qualified electors.

Inspectors of election to administer oath when vote is challenged.

Form of oath.

SECTION 1. Chapter 151 of the laws of 1873, entitled "an act to incorporate the city of Neenah," is hereby amended as follows, viz: by adding to the end of section one of chapter two of said chapter 151, the following: "*And provided, further,* that if either of the aldermen thus designated as 'supervisor' shall be absent, or from any cause shall be unable to attend the meeting of the said board of supervisors, and shall have given notice thereof to the clerk of said city, the common council may appoint any other resident of said city to represent said ward and city in said board, and the certificate of the mayor of such appointment, attested by the said clerk, shall entitle such appointee to represent said ward and city in said county board, until such alderman supervisor shall appear and claim his seat therein." Section 5 of said chapter 2, of said chapter 151, is hereby amended to be and read as follows: All persons who are qualified electors of the state of Wisconsin, and who shall reside in the ward where they offer their vote, shall be deemed qualified electors of said city and ward. Section six of said chapter two is also hereby amended to be and read as follows: If either of the inspectors of election, or aldermen, shall suspect that any person offering to vote does not possess the necessary qualifications of an elector, or if such vote be challenged by an elector, the inspector or alderman, before receiving any such vote, shall require the voter offering his vote to take the following oath: "You do solemnly swear (or affirm, as the case may be) that you are twenty-one years of age; that you are a citizen of the United States (or have declared your intentions to become a citizen conformably to the laws of the United States on the subject of naturalization); that you have resided in the state of Wisconsin one year next preceding this election, and that you are an actual resident of the city of Neenah, and of this ward, and that you have not voted at this election, and that you have made no bet or wager depending upon the result of this election." And if the person offering to

vote shall take such oath, his vote shall be received ; and if such person shall take such oath falsely, he shall be deemed guilty of willful and corrupt perjury, and upon conviction thereof shall suffer the punishment provided by law for persons guilty of perjury. If any person not a qualified voter shall vote at any election, or if any person duly qualified shall vote in any other ward than the one in which he resides, or shall vote more than once at any election, he shall be deemed guilty of a misdemeanor, and on conviction thereof shall forfeit and pay a sum not exceeding one hundred dollars, nor less than twenty-five dollars. It shall be the duty of the inspector to keep a list of all the names of all persons whose vote may be challenged as aforesaid and shall swear in their vote: and if any inspector or alderman shall knowingly and corruptly receive the vote of any person not authorized to vote, or shall make out false returns of any election, or if any clerk shall not write down the name of every voter as he votes, or shall willfully make and return incorrect counts and tallies of votes, each and every inspector or clerk shall be liable to prosecution, and on conviction thereof shall severally forfeit and pay a sum not exceeding five hundred dollars nor less than one hundred dollars. All such prosecutions shall be tried in the circuit court for the county of Winnebago-

Penalty for taking such oath falsely.

Penalty for voting when not a qualified elector, or for voting more than once at any election.

Inspectors to keep a list of names of persons whose vote may be challenged.

Penalty for making incorrect returns or tallies.

SECTION 2. Section 7 of chapter 3 of said chapter 151, is hereby amended to be, and read as follows: The chief of police shall perform such duties as shall be prescribed by ordinance for the preservation of the public peace, and the collection of fines and license moneys. He shall possess the powers of a constable at common law, or by the laws of the state, and receive like fees, but shall not receive any fees for serving any process, making any arrest or performing and [any] duties from the city of Neenah, except his per diem hereinbefore provided for; the said policemen of each ward shall be under the control and direction of the mayor and chief of police, and shall have all of the powers, and shall perform all the duties of constables under the laws of the state of Wisconsin.

Duties and powers of chief of police.

SECTION 3. Subdivision 23 of section 3 of chapter 4 of said chapter 151 is hereby amended so as to read as follows: "23d. To regulate the time and manner of holding public auctions and vendues by permanent auctioneers, and to license the same, and to regulate and license the sale of goods, wares and merchandise

To regulate auctions and vendues.

To license hawkers, and peddlers or travelling auctioneers.

or any other article or commodity, carried from place to place to sell by hawkers, peddlers or traveling auctioneers, and to determine the sum or sums to be paid for said license and the time and manner of paying the same." Subdivision 29 of said section 3 is also hereby amended to be and read as follows: "29th. No appropriation shall be made nor shall any debt be created, or liability be incurred against the city, except by a vote of a majority of all the members of the council; and all laws, ordinances, rules and resolutions shall be passed by an affirmative vote of a majority of all the members of the common council; and all ordinances, before the same shall be in force, shall be signed by the mayor, and all resolutions or measures for the appropriation of money, whereby a debt shall be created against or a liability incurred by the city, shall be approved by the mayor before the same [shall] be in force: *provided*, that in case the mayor shall refuse to sign any ordinance or any certificate of the appropriation for money, or shall refuse to approve any resolution or by-law creating a debt or establishing a liability against the city, 'five' aldermen voting in the affirmative shall have the power to re-pass such ordinance, resolution, by-law or certificate, notwithstanding the objections of the mayor; and all ordinances shall be published in a public newspaper printed in the city of Neenah, to be selected by the common council, before the same shall be in force; and within fifteen days after publication, such publication being duly proved by the affidavit of the printer or foreman of the printers of such newspaper, the city clerk shall record such ordinance and affidavit in a book provided for that purpose, and such affidavit shall be *prima facie* evidence of such publication.

How debt of city may be incurred.

Ordinances to be published before same shall be in force.

Common council may lay out public squares streets and alleys.

May take private property for that purpose.

SECTION 4. Section one of chapter five of said chapter 151 is hereby amended to be and read as follows: The common council shall have power to lay out public squares, grounds, streets and alleys, and to widen the same, and to make all necessary and proper improvements, within the limits of said city, as follows: Whenever ten or more freeholders, residing in any one ward shall, by petition, represent to the common council that it is necessary to take certain lands within the ward where such petitioners may reside, for the public use, for the purpose of laying out public squares, grounds, streets or alleys, or the enlarging or widening of the same, or for other public improvements, the courses and distances, metes and bounds of the land proposed to be taken, together with the names and resi-

dence of the owners of such premises, if the same shall be known to the petitioners, to be set forth in such petition, the common council, if it shall determine that the prayer of such petition should be granted, shall thereupon cause notice of such application to be given to the occupant or occupants, owner or owners of such lands, or if a portion of such lands shall not be in actual occupation of any person, and the owner or owners are non-residents of the said city, then the common council shall cause such notice, describing as near as may be the premises proposed to be taken, to be published in the official paper for four weeks; at least once in each week. Section 2 of chapter 5 of said chapter 151, is hereby amended to be and to read as follows: Such notice shall state that on a certain day therein to be named, not less than ten days from the service of such notice, or the expiration of such publication as the case may be, application will be made to the justice of the peace at large, or other justices of the peace of said city, to be named in said notice for the appointment of twelve jurors to view said premises and to determine whether it will be necessary or expedient to take the same for the purposes specified in such petition. Section 3 of said chapter 5 is hereby amended to be and read as follows: Upon the presentation of such application and upon proof of the publication of service of the notice herein required, the said justice of the peace shall thereupon appoint twelve respectable freeholders, residents of the city but not residents of the ward in which such premises may lie or interested in such application. The said justice shall thereupon issue his precept, directed to the chief of police or any other officer authorized to serve process in civil actions, commanding him to summon the twelve persons named in said precept, personally to appear at a time and place, to be named therein, before him, to be sworn as such jurors, and therein requiring them within fifteen days thereafter to view said premises (to be specified therein), and to make return under their hands, to the common council, whether, in their judgment, it is necessary to take said premises for the purposes specified in said application. The officer to whom said receipt shall be delivered, shall thereupon proceed to summon said jurors, by reading said precept to each of them, except such of them as cannot, by diligent search be found, and he shall make due return of his doings in said matter to said justice, in writing, to be endorsed on, or annexed to said precept.

Property proposed to be taken, to be advertised and appraised.

Section 4 of said chapter five, is hereby amended so as to read as follows: If any of the jurors so appointed, cannot, after diligent search, be found, or shall be absent, or shall refuse to act, or shall be disqualified from acting, the said justice shall appoint others in their place, who shall be forthwith summoned by said officer in like manner, until said jury is complete, and a memorandum of such substitution shall be endorsed upon or annexed to said precept. Each of said jurors shall there, and before entering upon the discharge of their duties, severally take and subscribe an oath to be endorsed on or annexed to said precept, to be administered by said justice or other competent officer, "that he is a resident and freeholder of said city, and not a resident of the ward in which the property proposed to be taken is situated, and is not interested in the premises proposed to be taken, and that he will faithfully and impartially discharge the trust imposed in him as such juror." Said chapter 5 of said chapter 151, is hereby further amended by adding to the end thereof the following sections, viz: "Section 23. Whenever the owner or owners of any land in said city shall desire the continuation of a street or alley or highway, or a new street or alley through or over the same, and shall have filed his or their written consent thereto, specifying the width, course and termination of such street, with the clerk of said city, the common council may, by resolution, lay out, establish and name and open said street or alley, in accordance with said consent, and said street or alley shall thereafter be subject to all laws and ordinances of said city applicable to streets and alleys. Section 24. Whenever complaint shall be made to the common council, that any highway, street or alley in said city has been or shall be encroached upon, by any fence, building or other fixture, the said council may by resolution require and direct the removal of such encroachment, and thereupon the mayor of said city shall make an order under his hand, requiring the occupant of the land through or by which such highway, street or alley runs, and to which such fence, building or other fixture shall be appurtenant, to remove the same beyond the limits of such highway, street or alley within twenty days thereafter: and he shall cause a copy of such order to be served upon such occupant; and every such order shall specify the width of such highway, street or alley, the extent of the encroachment, and place or places in which the same may be, with reason-

Encroachment on streets prohibited.

Encroachments, how removed.

able certainty. Section 25. If the fence, building or other fixtures causing such encroachment shall not be removed within said twenty days after the service of such copy of such order, and such occupant shall not have denied such encroachment as provided in the next succeeding section herein, such occupant shall forfeit the sum of one dollar for every day, after the expiration of said time, during which such encroachment shall continue, which may be sued for and recovered by the city in the name thereof, before any justice of the peace of said city; and in such case, if such encroachment shall not be removed within thirty days after the service of such copy, in addition to the collection of said penalty or forfeiture, the common council may, by resolution, authorize and direct the superintendent of streets of said city to forthwith remove such encroachment or encroachments; and it shall thereupon be lawful for and the duty of said superintendent of streets, without delay, to remove or cause to be removed, such fence, building or other fixture beyond the limits of such highway, street or alley, as specified in the order mentioned in the next preceding section. Section 26. If the occupant upon whom a copy of such order shall be served, shall, within ten days after the service thereof, in writing, deny such encroachment and file the same or a copy thereof with the city clerk, the said clerk shall thereupon make out and serve upon such occupant a notice that at a time and place therein named to be not less than twenty-four hours after said service, application will be made to a justice of the peace of said city to be named therein, for the selection of six disinterested freeholders of said city to enquire into the premises, at the time and place therein designated, the said justice shall make out a list of eighteen disinterested freeholders of said city, from which six shall be selected and struck in the same manner that juries are selected and struck in justices' courts; the said justice shall thereupon issue his precept, directed to the chief of police, deputy sheriff or any constable of the county, commanding him to summon the six freeholders thus selected, to meet at a certain day and place not less than two days after the issuing thereof, to inquire into said alleged encroachment; and should either party not be present at the selection of said jury, said constable shall give such absent party at least one day's notice of the time and place at which such freeholders are to meet. "Section 27. On the day specified in the precept, the jury so summoned

Penalty for failure to remove encroachments.

How penalty collected.

If encroachment is denied a jury shall be selected to determine the facts.

How jury to be selected.

proofs and allegations.

Jury to report in writing to city clerk.

shall be sworn by such justice well and truly to enquire whether any encroachment has been made as described in the order of said mayor and by whom; and the witnesses produced by either party shall be sworn by the justice, and the jury shall hear the proofs and allegations which may be produced and submitted to them; and in case any person so summoned as a juror shall not appear, or shall be incompetent, his place may be supplied by a talesman as in other cases. Section 28. If the jury find that any such encroachment has been made, they shall make and subscribe a certificate in writing of the particulars and extent of such encroachment and by whom made, and shall file the same in the office of the city clerk; and the occupant of the land, whether such encroachment shall have been made by him or by any other person, shall remove the fence, building or other fixture causing such encroachment within twenty days after the filing of such certificate under a like penalty of one dollar for each day after the expiration of such time during which such encroachment shall continue, to be sued for and recovered as provided in section 25 of this chapter; and if said encroachment shall not be removed within twenty days after the expiration of said time, in addition to the recovery of said penalty, the common council may proceed to cause such encroachment to be removed as provided in said section 25 herein. "Section 29. If the jury find that any encroachment has been made as aforesaid, the occupant shall pay the cost of such inquiry, and if the same shall not be paid in ten days, the justice shall issue an execution for the collection thereof, directed to the chief of police of the city, sheriff or deputy sheriff, or any constable of the county, commanding him to levy such costs and his fees thereon, of the goods and chattels of such delinquent, and make return thereof to such justice within thirty days from its date; and the justice, constable, jurors and witnesses shall be entitled to the same compensation as other similar services in trials before justices of the peace. "Section 30. If the jury find that no encroachment has been made, they shall so certify, in which case the city shall be liable to pay the costs of the proceedings, including the fees of witnesses of said occupant, who shall have been sworn in said matter; and the common council shall allow the same as other accounts against said city."

SECTION 5. Section 21 of chapter six of said chapter 151 is hereby amended to be and read as follows:

The city treasurer shall credit each ward in said city with the amount of such highway tax collected by him therein, and all moneys so collected shall be expended on the streets, highways and bridges in the wards where collected, in the manner in this act provided. The common council may order the construction and preparing [repairing] of bridges to be done at the expense of the whole city.

Highway tax collected shall be expended in the ward where collected.

SECTION 6. The several chapters and sections thereof, of said chapter 151, in which occurs the words "police justice," is hereby amended by striking out said words from said chapters and sections, whenever they occur, and by inserting in lieu thereof in each place, the words, "justice of the peace at large." Section 6 of chapter 9 of said chapter 151, is hereby amended to be and read as follows: The said justice of the peace at large shall have and possess all the rights, powers and privileges of justices of the peace, and all the laws of this state concerning justices' courts shall apply to the said court of the city of Neenah, except so far as said laws conflict with the provisions of this act, but nothing in this section shall in any way change or impair the right of the present police justice to hold his office of justice for and during the term for which he was elected such police justice; but he shall be known and described as the justice of the peace at large. Section 8 of said chapter 9 is hereby stricken out.

SECTION 7. Section 6 of chapter 6, of said chapter 151 is hereby amended to be and read as follows: Every male inhabitant of the city of Neenah, over twenty-one years of age, and under fifty, except active members of the fire department, shall pay into the city treasury annually the sum of one dollar and fifty cents each, as a poll-tax. It shall be the duty of each of the assessors of the city of Neenah, during the month of May, to make out duplicate lists of all persons liable to said tax, and said assessor shall, on the first Monday of June, deliver one of said lists to the city clerk and one to the treasurer of the city of Neenah. The said treasurer shall thereupon immediately proceed to collect the same, and all persons liable to pay such tax, who shall not have paid the same after demand, either personal or by written notice left at their usual place of abode, on or before the first day of July, shall be liable to and shall pay a penalty of two dollars, together with the costs of prosecution, to be prosecuted for by said treasurer, in the name of the city of Neenah. The process in such case shall be by warrant, and in case judgment shall be rendered

Annual poll tax \$1.50.

How collected.

against the defendant in such action, and he shall refuse or neglect to pay such judgment, he shall be imprisoned in the county jail not to exceed ten days. The assessors shall also, at the time of assessing the annual taxes in each year after the year 1873, make out such duplicate lists of persons liable to pay such tax as aforesaid, and deliver one of the said lists to the city clerk and one to the city treasurer at the time he returns to the city clerk his assessment roll of real and personal property of the city of Neenah, and the city treasurer shall collect the same in the same manner as hereinbefore in this section provided, and in case said taxes are not paid to said treasurer, he shall prosecute for them in the manner hereinbefore provided. The said assessor in making such lists shall designate the ward in which such person on said lists resides, and the treasurer shall credit each ward of the city with the amount thus collected from the inhabitants of such ward; the moneys collected as above shall be kept as a distinct fund, and shall be expended under the direction and supervision of the superintendent of streets on the repair and improvement of streets of the respective wards in which said tax is paid, and to be drawn out on itemized accounts of the street commissioner, certified to by the senior alderman of the ward in which said work is done and audited by the common council. The mayor, city clerk and treasurer shall constitute a board to determine the liability of persons to pay such tax: and all persons claiming to be exempt from such tax must apply to said board within twenty days from the time when said lists shall be delivered to the treasurer as aforesaid. The city treasurer shall receive the same fees for collecting said tax as he does for collecting taxes assessed upon real and personal property; *provided*, that if any person shall desire to, he shall be permitted to perform one day's work upon the streets of the city, in the ward in which he resides, under the direction of the superintendent of streets, and at such time as he shall direct within the said month of June of each year and the certificate of the superintendent of streets that such person has performed one full day's labor, shall be received by the city treasurer in full discharge of such tax.

How expended.

May pay poll tax in labor.

Actions to recover any penalty or forfeit, how brought.

SECTION 8. Section 13 of chapter 11 of said chapter 151 is hereby amended to be and read as follows: All actions brought to recover any penalty or forfeiture under this act, or the ordinances, by-laws, police or health regulations, made in pursuance thereof, may

be brought in the corporate name of the city. It shall be lawful to declare generally for such penal or forfeiture, stating the clause of this act or by-law or ordinance under which such penalty or forfeiture is claimed, and to give the special matter in evidence under it. All prosecutions may be commenced by summons or by warrant, as the exigency of the case may require. In all cases where an action might be brought by the city of Neenah against any person, company or corporation, such action may be commenced and prosecuted in the name of the city, by any elector of said city: *provided*, that before any person other than the proper officers of said city shall prosecute any such action, the person or persons so commencing shall enter into bonds, with sufficient surety, to the opposite party, to be approved by the judge or justice before whom such action shall be brought, conditioned that he or they will pay all costs that might be recovered against the city in such action. After the filing of such bond, with the papers in the case, such action shall not be discontinued or defeated by the city, nor shall the city be liable for any costs on account of any such action, but such costs, where the action shall fail, may be recovered against the party commencing the same, upon the bond filed as aforesaid: *provided*, that nothing herein contained shall be so construed as to prevent any peace officer from arresting, without process, any person in a state of intoxication or guilty of immoderate drinking, improper reveling, obscenity or noisy, boisterous or disorderly conduct in the streets or public places, and taking such person or persons forthwith before the police justice, or keeping them in confinement until such time as said justice can reasonably hear and dispose of such offenders. Section 21 of chapter 11 of said chapter 151, is hereby amended to be and read as follows: The mayor and every member of the common council of the city of Neenah, shall be entitled to receive a compensation of fifty cents for each and every time of attending the common council during the term of such member or alderman holding his respective office, and said member shall also be entitled to receive compensation for all actual services for the city, and for services as an inspector of election, member of the board of registry, and as member of the board of equalization; but any member of the common council, or other city officer, who shall be directly or indirectly interested in any contract made with or in behalf of the city, and any member of said council or other city

Compensation
of mayor and
common coun-
cil.

Compensation
of other officers

Contract made in violation of the provisions of this section to be void.

Section 31, ch. 11, amended.

officer who shall directly or indirectly purchase, or be interested in the purchase of, any city order or city indebtedness for less than the full amount thereof, shall be deemed guilty of a misdemeanor in office, and may be prosecuted either by indictment, or complaint, before the justice of the peace at large, or any justice of the peace having jurisdiction, and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars nor less than twenty dollars, or by imprisonment in the county jail not more than thirty days nor less than ten days, or both at the discretion of the court; and any contract made in violation of the provisions of this section shall be void.

Section 31 of said chapter 11, is also hereby amended to be and read as follows: Whenever any complaint is made to the justice of the peace at large of said city by any police officer, sheriff, deputy sheriff, policeman or other person, that any offense has been committed within the said city against the provisions of the charter of said city or of the by-laws or ordinances passed in pursuance thereof, whether such offense is made punishable under such charter or ordinances by fine, penalty or imprisonment, the said justice shall examine the complainant on oath and reduce the complaint to writing, and cause the same to be subscribed by the complainant; and if it shall appear that any [such offense has been committed, the said justice, instead of proceeding as authorized by section 13 of this chapter, may issue his warrant in the name of the State of Wisconsin, as in criminal actions, reciting the substance of the complaint, requiring the officer forthwith to arrest the accused and bring him before such justice, to be dealt with according to law. All the laws of this state relating to the manner of conducting criminal actions before justices courts shall be applicable to all trials before the justice of the peace at large under this act, so far as the same do not conflict with the provisions of this act: *provided*, when the complaint is made by any person other than a police officer of said city, or sheriff or deputy sheriff of Winnebago county, the said justice, before issuing his warrant, may require security, as provided in section thirteen of chapter ten of this act, and it shall be lawful for the chief of police, policeman, watchman or other peace officer, to temporarily confine in the lock-up of said city, any person under arrest, until such person can be properly taken before such justice for examination or trial, and for such justice, after such person shall have been taken before him to order such person

for safe keeping, to be confined therein from time to time, until such examination or trial shall have been completed. Section 32 of chapter 11 of said chapter 151 is hereby stricken out.

SECTION 9. This act shall be in force from and after its passage and publication.

Approved March 10, 1874.

CHAPTER 220.

[Published March 24, 1874.]

AN ACT regulating the fees of the lumber inspector of lumber district number two.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. The lumber inspector of lumber district number two shall be entitled to receive and may sue for and collect the sum of three cents per thousand feet for surveying or scaling and making out survey bills for all logs that he is called upon to scale, including bills.

Fees of lumber inspector.

SECTION 2. Lumber district number two is hereby exempted from the provisions of section 10 of chapter 167 of the general laws of 1864, so far as it relates to the fees of lumber inspectors.

Lumber district No 2, exempt from provisions of sec. 10 chap 167, laws of 1864, relating to fees of inspectors.

SECTION 3. This act shall take effect and be in force from and after its passage.

Approved March 10, 1874.

CHAPTER 221.

[Published March 24, 1874.]

AN ACT to provide for the purchase of 250 copies of Webster's Unabridged Dictionary.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. The state superintendent of public instruction is hereby authorized and directed to purchase

Providing for purchase of Webster's un-